



**CITY OF SUNNYVALE
REPORT
Administrative Hearing**

March 16, 2005

SUBJECT: **2004-0977 – Aragvi/WinMart** [Applicant] **Armanini Albert L Trustee & Et Al** [Owner]: Application on a 1.9-acre site located at **833 West El Camino Real Suite #1** in a C-2/PD (Highway Business/Planned Development) Zoning District. (APN: 165-01-042):

Motion Special Development Permit to allow liquor service in an existing banquet facility.

REPORT IN BRIEF

Existing Site Conditions Commercial Shopping Center

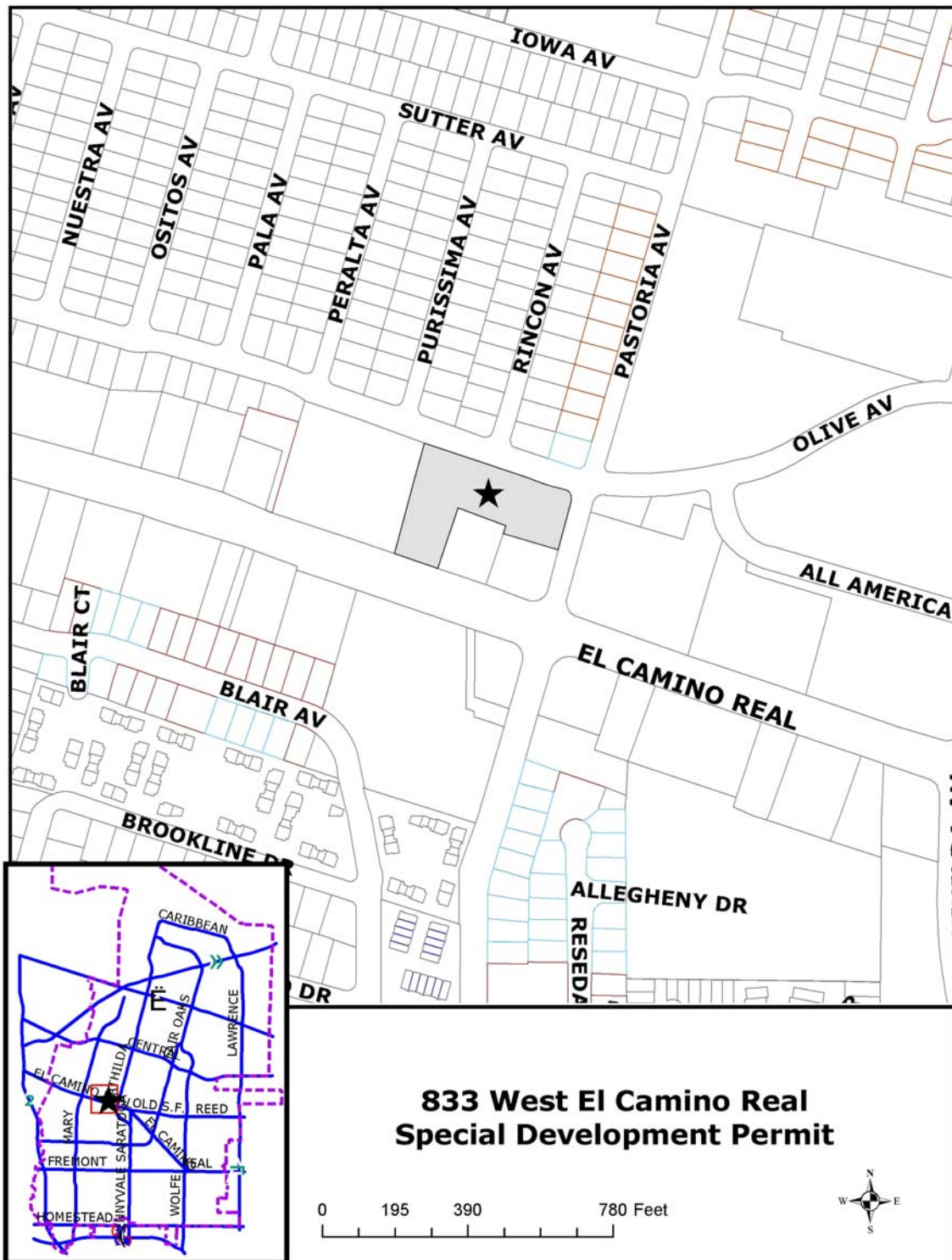
Surrounding Land Uses

North	Across Olive Avenue, Single Family and Duplex residences
South	Across El Camino Real, Commercial Uses
East	Across Pastoria Avenue, Police Station and City Hall
West	Hotel

Issues Parking
Noise Impact on Neighbors

Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Approve with Conditions



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Commercial General Business	Same	Commercial General Business
Zoning District	C-2/PD	Same	C-2/PD
Lot Size (s.f.)	82,116	Same	No min.
Gross Floor Area (s.f.)	24,858	Same	No max.
Gross Floor Area of Tenant	4,853	Same	
Lot Coverage (%)	30%	Same	35% max.
No. of Buildings On- Site	2	Same	2 by SDP
No. of Stories	1	Same	8 max.
Occupancy of Subject Tenant Space (people)	66	Same	66 per Building Code
Parking			
• Total Spaces	128	Same	148 min., but 128 allowed by SDP
• Standard Spaces	107	Same	111 min.
• Compact Spaces/ % of Total	16	Same	12 max.
• Accessible Spaces	5	Same	5 min.

ANALYSIS**Description of Proposed Project**

The proposed project is to upgrade the current beer and wine liquor license to include distilled spirits to be consumed on-site for a restaurant and entertainment use. The existing restaurant/entertainment use is a 1,100 square foot part of a 4,853 square foot tenant space used primarily as a grocery store. No exterior changes are proposed as a result of this project. The applicant has improved the sound-proofing on the interior wall adjacent to the neighboring restaurant as a part of this application. This application does not include a request to increase the hours of 7:00 p.m. to midnight hours as approved by the September 25, 2002 Special Development Permit (2002-0636).

Background

Previous Actions on the Site: The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing / Decision	Date
2002-0636	Special Development Permit to allow a restaurant and live entertainment in an existing grocery store.	Administrative Hearing / Approved	09/25/2002
1998-0737	Special Development Permit to allow three building on one parcel.	City Council / Approved	01/07/1974

This site has been the source of complaints by the owner of the neighboring “Kabul” restaurant. In February 2004, a complaint was filed with the City for excessively loud noise and vibration resulting from a live band providing entertainment on the subject site. Neighborhood Preservation investigated the matter and advised the owner of the neighboring restaurant to work with the property management agent to resolve the issue (See Attachment E for Neighborhood Preservation case 2004-0324).

Staff conducted a site inspection on January 11, 2005 and spoke with co-owner Karapet Grigorian. Later that day, both co-owners spoke with the project planner regarding the use of the site. There was initially some confusion as to whether the hours of operation included lunch time; however, there was subsequent confirmation that the use of the banquet room is only for evening hours.

The Administrative Hearing was originally scheduled for January 26, 2005, but the applicant requested a continuance after reading the staff report and discovering that staff had recommended denial of the application based on the anticipated increase in the noise impact on the neighboring tenant. The applicant provided a letter on January 24, 2005 requesting a continuance and disagreeing with staff findings (see Attachment F). Staff response to the letter is included in Attachment H. As the notice of the meeting had already been posted, the public could not be notified of the rescheduling prior to the hearing. Najib Naimi, the owner of the Kabul restaurant attended the hearing with the intent to speak to the application.

The co-owners/applicants met with the Planning Officer and the Project Planner on January 31, 2005 to express concern with the staff recommendation and to discuss the issues raised in their letter. At the conclusion of the meeting, staff committed to:

- Include a copy of the previous Neighborhood Preservation report (see Attachment E).
- Obtain a letter from the owner of the neighboring “Kabul” restaurant, detailing the specific concerns and noise impacts (owner provided letter, see Attachment G).
- Contact Project Sentinel to provide mediation assistance in resolving outstanding disputes with noise (Project Sentinel contacted and mediations conducted, as detailed below).
- Speak with the property owner / manager (property manager stated that both parties are good tenants and she does not want to take sides in the dispute).

Project Sentinel facilitated two mediations for the applicant and the neighboring tenant. The first mediation was conducted on February 8, 2005 but did not result in a written agreement. The parties met again on February 15, 2005 for a second mediation which resulted in a Mediation Agreement signed by both parties (see Attachment I). The Mediation Agreement stated that Alex Birman would install sound proofing materials, and once the installation was complete that Najib Naimi would remove his objection for the issuance of a liquor license for Aragvi. The Agreement stated that if noise continues to be an issue, the parties will meet to resolve it.

According to co-owner Karapet Grigorian, the sound-proofing installation was completed on March 7, 2005.

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemption includes existing facilities with negligible expansion of an existing use.

Special Development Permit

Use: The existing restaurant and live entertainment with the sale of beer and wine for consumption on-site are conditionally approved uses. However, the sale of distilled liquor for consumption on site is considered an expansion of use, requiring approval of a Special Development Permit. Past experience with expansion of liquor licenses has been that increasing the strength of alcohol consumed results in an increase in noise or disturbance emanating from a site. This noise or disturbance can be due to an increased in noise from patrons or related activities (including music) wither within or outside of a facility (such as in the parking area). The noise within the building may be mitigated by installation of additional sound-proofing materials.

Parking: Per the 2002 Special Development Permit (SDP) File Number 2003-0636, the site has only 128 parking spaces, which is a deficit of 20 spaces from the 148 spaces required by design for the proposed use. This deficit was addressed by limiting the use of the facility to off-peak (lunch) hours. The conditionally approved SDP restricted hours of operation from 7:00 p.m. to midnight.

Conclusion

Expected Impact on the Surroundings: According to the neighboring tenant, the previously approved restaurant and entertainment use is currently having a negative impact on his customers. Staff spoke with the owner of the neighboring "Kabul" restaurant on January 18, 2005. The owner expressed serious reservations about expanding the existing permitted use to include distilled alcohol given the current noise issues associated with the existing use. The neighboring tenant indicated that the loud noise has had a negative impact on his patrons, potentially impacting his business. He also stated that the patrons of the subject site often smoke in the near proximity of the door to the Kabul restaurant, resulting in a further nuisance to his patrons. A letter has been submitted detailing these complaints (see Attachment G).

Staff Discussion: The applicants noted the expanded liquor license has been requested in response to customer requests for a greater variety in the alcoholic beverages offered. They did not think that providing a greater variety of alcoholic beverages would result in greater noise or impact. The applicant noted that although Public Safety had been called "five or six times" in the past two years since the facility has been operational, no citations have been issued.

The Department of Public Safety does not have a current log of complaints for the subject site. However, Public Safety staff indicated that expanding such uses generally results in an increase in noise.

The proposed expanded use for sale of distilled liquor is expected to increase the current impact on the neighboring tenant. However, the applicant has addressed the potential increase as well as existing noise impact on the neighboring site by installing sound-proofing in the common wall. Based on addition of the sound-proofing and the terms of the jointly signed Mediation Agreement, it appears that the noise impact has been mitigated.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected.

Findings, General Plan Goals and Conditions of Approval

Staff was able to make the required Findings based on the justifications for the Special Development Permit. Findings and General Plan Goals are located in Attachment A. The recommended Conditions of Approval are located in Attachment B.

Public Contact

The owner of the neighboring tenant “Kabul” restaurant spoke with staff about the existing noise issues and his concerns that they would be exacerbated by the expanded use. The owner also submitted a letter on February 8, 2005 indicating the disturbance is “loud music with very high base which causes vibration in the bar area” and patrons of Aragvi who smoke cigarettes near the entrance door to the Kabul restaurant (see Attachment G).

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 31 notices mailed to adjacent property owners and residents of the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website• Recorded for SunDial

Alternatives

1. Approve the Special Development Permit with attached conditions.
2. Approve the Special Development Permit with modified conditions.
3. Deny the Special Development Permit.

Recommendation

Alternative 1.

Prepared by:

Jamie McLeod
Project Planner

Reviewed by:

Diana O'Dell
Senior Planner

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site Plans
- D. Application Materials
- E. Neighborhood Preservation case 2004-0324
- F. Applicant's letter in response to staff's recommendation for denial
- G. Neighboring tenants letter of concern
- H. Staff response to issues in Applicant's letter
- I. Mediation Agreement

Recommended Findings - Special Development Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element. N1.10.1 – “Locate commercial uses where traffic can be accommodated, especially during peak periods (e.g. lunch time and commute times).”

Land Use and Transportation Element. C1.1.2 – “Promote and achieve compliance with land use and transportation standards.”

Land Use and Transportation Element. Policy N1.13 – “Promote an attractive and functional commercial environment.”

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the applicant has taken action to mitigate the expected increase in noise. The use is consistent with the Land Use and Transportation Element Policy C4.3 “*Consider the needs of business as well as residents when making land use and transportation decisions*” as accommodations have been made for anticipated impact.
2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties by providing a mitigation for the anticipated noise and disruption to the neighboring tenant on the property. While the existing structure was not designed to control the impact of a live band playing in a neighboring tenant space, the applicant has installed sound-proofing materials to reduce the impact of the potential increase in noise.

Recommended Conditions of Approval - Special Development Permit

Staff is recommending denial of the Special Development Permit. However, if the Administrative Hearing Officer approves the permit, staff has provided the following recommended Conditions of Approval.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. The Special Development Permit for the use shall expire if the use is discontinued for a period of one year or more, this includes the use permitted by Special Development Permit File Number 2002-0636.
- B. Any expansion or modification of the approved use shall be approved by separate application at a public hearing by the Administrative Officer.
- C. Applicant shall install additional sound proofing materials along the wall between the banquet room and neighboring tenant to mitigate noise and vibration impacts on the neighboring tenant's business.
- D. Applicant shall obtain a new liquor license from the California Alcoholic Beverage Control prior to use of distilled alcohol on the premises.
- E. The hours of operation for the restaurant / entertainment use are 7:00 p.m. to 12:00 a.m. (midnight).
- F. Tenant responsible for ensuring customers do not smoke within 20 feet of any doorways, per State law.
- G. The previously approved live entertainment may not include adult entertainment, as defined by the Sunnyvale Municipal Code.
- H. All other Conditions of Special Development Permit File Number 2002-0636 not addressed in these Conditions of Approval shall remain in force.

El Camino @ S. Pastoria Ave.
Sunnyvale, California

JOB COPY

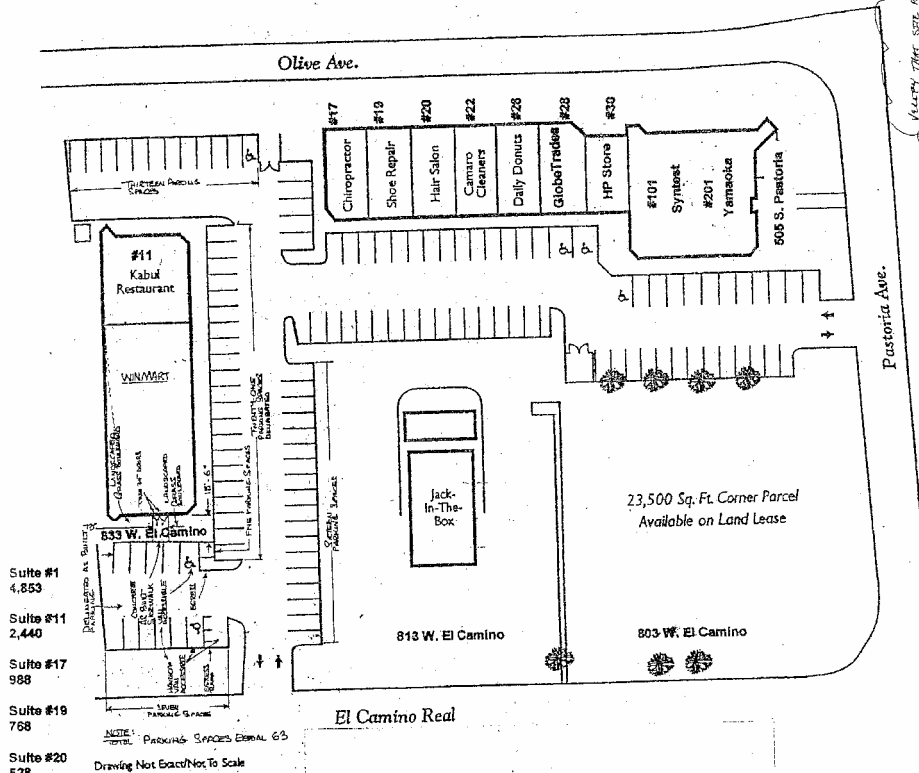
20-91-RH
SEARCHED INDEXED
SERIALIZED FILED
APR 11 1964
FBI - NEW YORK

Santa Clara County
Department of Public Health
400 E. Alameda Ave., Suite 100
San Jose, CA 95110

ATTACHMENT

Page 2 of 1

VERIFY THAT SITE ADDRESS, FORM OF CONSTRUCTION, & ENTRANCE TO SEWERS FULLY CONFORM TO CA TITLE 24 REQUIREMENTS FOR SEWERS INSTALLATION.



Suite #1
4,853

Suite #11
2,440

Suite #17
988

Suite #19
768

Suite #20
528

Suite #22
2,304

Suite #26
1,152

Suite #28
910

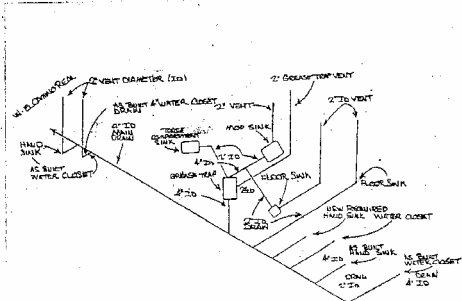
Suite #30
1,100

Suite #101
4,393

Suite #201
4,917

NOTES: PARKING SPACES EQUAL 63
Drawing Not Exact/Not To Scale

El Camino Real



SECTION I - FOR ALL RETAIL APPLICANTS

1. APPLICANT NAME(S) ALEX BIRMAN KARAPET GRIGORIAN 12. LICENSE TYPE(S) 41

3. PREMISES ADDRESS (Street number and name, city, zip code) 833 W EL CAMINO REAL, #1, SUNNYVALE CA 94087 14. NEAREST CROSS STREET PASTOR #1A

5. TYPE OF BUSINESS (Choose one that best describes the planned operation)

<input checked="" type="checkbox"/> Full Service Restaurant	<input type="checkbox"/> Hofbrau/Cafeteria	<input type="checkbox"/> Cocktail Lounge	<input type="checkbox"/> Private Club
<input type="checkbox"/> Deli or Specialty Restaurant	<input type="checkbox"/> Comedy Club	<input type="checkbox"/> Night Club	<input type="checkbox"/> Veterans Club
<input type="checkbox"/> Cafe/Coffee Shop	<input type="checkbox"/> Brew Pub	<input type="checkbox"/> Tavern: Beer	<input type="checkbox"/> Fraternal Club
<input type="checkbox"/> Bed & Breakfast	<input type="checkbox"/> Theater	<input type="checkbox"/> Tavern: Beer & Wine	<input type="checkbox"/> Wine Tasting Room
<input type="checkbox"/> Supermarket	<input type="checkbox"/> Membership Store	<input type="checkbox"/> Service Station	<input type="checkbox"/> Swap Meet/Flea Market
<input type="checkbox"/> Liquor Store	<input type="checkbox"/> Department Store	<input type="checkbox"/> Convenience Market	<input type="checkbox"/> Drive-in Dairy
<input type="checkbox"/> Drug/Variety Store	<input type="checkbox"/> Florist/Gift Shop	<input type="checkbox"/> Convenience Market w/Gasoline	
<input type="checkbox"/> Other - describe: _____			

6. WHAT PERCENTAGE OF YOUR TOTAL SALES WILL BE ALCOHOLIC BEVERAGES? 7% (Estimate) 7. SURROUNDING AREA ☒ Commercial ☐ Residential ☐ Rural ☐ Industrial ☐ Other: _____ 8. PARKING LOT? ☒ Yes ☐ No

9. LOCATED ON ☒ Major Thoroughfare ☐ Secondary Street ☐ Other: _____ 10. VIDEO/COIN-OPERATED GAMES? ☐ Yes ☒ No

11. LOCATED IN ☐ Free Standing Building ☒ Shopping Center: ☒ 10 Units or Less ☐ More than 10 Units Shopping Center Name: MARKET CENTER

12. TYPE OF STRUCTURE ☒ Single Story ☐ Two-Story ☐ Multi-Story - Number of stories: _____ 13. PASS-THROUGH WINDOW? ☐ Yes ☒ No

14. OPERATING HOURS

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Opening Time		11:30 AM	11:30 AM	11:30 AM	11:30 AM	11:30 AM	11:30 AM
Closing Time		12:30 AM	12:30 AM	12:30 AM	12:30 AM	12:30 AM	12:30 AM

SECTION II - FOR ON-SALE APPLICANTS ONLY (Restaurants, Taverns, etc.)

15. PATRON CAPACITY 72 16. FIXED BARS? ☐ Yes - how many: _____ ☒ No 17. PATIO? ☐ Yes ☒ No 18. WILL YOU HIRE A MANAGER? (Rule 57.5) ☐ Yes ☒ No 19. WILL YOU HAVE A FOOD LESSEE? (Rule 57.7) ☐ Yes ☒ No

20. ENTERTAINMENT (One or more may apply. Please describe any entertainment with an asterisk (*) below)

<input type="checkbox"/> None	<input type="checkbox"/> *Amplified Music	<input type="checkbox"/> Patron Dancing	<input type="checkbox"/> Card Room
<input checked="" type="checkbox"/> Recorded Music	<input checked="" type="checkbox"/> *Live Entertainment	<input type="checkbox"/> Bikini/Topless/Exotic	<input type="checkbox"/> Movies
<input type="checkbox"/> Juke Box	<input type="checkbox"/> *Floor/Stage Shows	<input type="checkbox"/> Pool/Billiard Tables	<input type="checkbox"/> *Hot-Spot/Lottery
<input type="checkbox"/> *Other	<input type="checkbox"/> Karaoke	<input type="checkbox"/> *Amateur/Pro Sports Events	<input type="checkbox"/> Video/Coin-Operated Games

*Description: _____

21. FOOD SERVICE

<input type="checkbox"/> None	<input type="checkbox"/> American	<input type="checkbox"/> French	<input type="checkbox"/> Indian	<input type="checkbox"/> Korean	<input type="checkbox"/> Seafood
<input type="checkbox"/> Minimal	<input type="checkbox"/> Chinese	<input type="checkbox"/> German	<input type="checkbox"/> Italian/Pizza	<input type="checkbox"/> Mexican	<input type="checkbox"/> Thai
<input checked="" type="checkbox"/> Full Meals	<input checked="" type="checkbox"/> Fast Food/Deli	<input type="checkbox"/> Greek	<input type="checkbox"/> Japanese	<input checked="" type="checkbox"/> Other: _____	

22. TYPE OF FOOD

23. HOURS OF FOOD SERVICE

BREAKFAST HOURS		LUNCH HOURS		DINNER HOURS	
From: _____	To: _____	From: <u>11:30 AM</u>	To: <u>2:30 PM</u>	From: <u>6:00 PM</u>	To: <u>12:30 AM</u>

24. INFORMATION GIVEN (R-27, R-107, Sec. 25612.5, Sec. 23790.5, etc.)

25. DATE ENTERED INTO CABIN

08.20.2002

833 W. El Camino Real , Suite # 1

European store-restaurant-meeting room was created for the purpose to serve the public in the City of Sunnyvale for convenience shopping as a grocery store and for celebrating special events (birthday celebration, family gathering etc) in the restaurant-meeting room known as "Aragvi".

The establishment as whole will be called " WINMART ".

The store portion will have 4-6 section : Delicatessen, Frozen food, Bakery, Dry and canned food and wine and beer.

The restaurant-meeting room (Aragvi) has special sound-proof walls not to disturb adjacent businesses during normal business hours if music is being played. Usually musical events will take place in the evenings.

Music will be played in different forms : Keyboard, CD or small piano led group.

Restaurant-meeting room (Aragvi) will have it's own entrance and exit.

Hours of operation :

WinMart (store) 10:00 A.M. – 8:00 P.M. Monday-Sunday

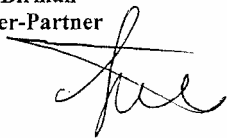
Aragvi (meeting room) 1:00 P.M. – 3:30 P.M. Monday-Sunday

6:30 P.M. – 9:30 P.M. Monday-Sunday

Or

Special Events 7:30 P.M.—Midnight Friday-Sunday

Alex Birman
Owner-Partner



Karapet Grigorian
Owner-Partner



Complaint: 2004-0324

Address: 833 W EL CAMINO REAL 1

Descript.: loud Band noise coming from Win Market (heavy base) excessive noise and vibrations
destroys the tranquillity of his guess while dinning Kabul Restaurant SMC 19.42.020

Owner:

Own Ph:

Sch. Date: 3/1/04

Description:

Insp. Date: 3/1/04

Comments: Talked with Rob Boco, he advised me that Kabul should should talk with mgn. company over noise issues. Talked with Najeeb from Kabul and told him what Rob Boco said. He said he would get in contact with mgn. co.He also stated he wanted to talk to Rob Boco and Diana O. about additional requirements and expiration dates. case closed

Sch. Date: 2/13/04

Description: Inspect for Compliance.notify both partys about noise

Insp. Date: 2/19/04

Comments: contacted Andrea Moss from Yamaoka Associates (prop. mgn.) left message to return call. Rec. return call from AM (Fri. 20th) she stated she was not aware of any current problems, but was aware of 1 noise issue last Xmas season 2002, 2003.she stated when she was there, the noise level did not seem loud to her. she advised Kabul to call police if they thought noise was to loud for there dinners.

Sch. Date: 2/12/04

Description: loud Band noise coming from Win Market (heavy base) excessive noise and vibrations destroys the tranquillity of his guess while dinning Kabul Restaurant SMC 19.42.020

Insp. Date: 2/12/04

Comments: talked w/ both parties about music. contacted Rob Boco for interpretation of SMC Alex Win Market 736-3316 will advise both latter

Attn: Project Planner
JAMIE MCLEOD

01.24.2005 Page 1 of 2

Subject 2004-0977 (Aragvi)
833 W El Camino Real, # 1
(APN : 165-01-042)
Phone: 408-736-3316

Dear Staff of the Planning Development Department:

With all do respect, we request that you postpone the public hearing to the next available opening spot. After reading the City of Sunnyvale Report, we do not agree with the recommendations presented by the project planner for several reasons. Unfortunately, these reasons were not taken into consideration when the review took place, for they were simply dismissed and overlooked.

Staff recommended denying the upgrade of a liquor license because of "a negative impact on a neighboring tenant". They claim that noise is bothering the neighboring tenant. After speaking with the project planner, she informed us that the noise they were complaining about was the music noise. We were wondering how the upgrade of a Liquor License would influence the music's noise level?

For your reference, from the moment the business was established, we built independent soundproof walls from floor to ceiling with additional insulation specifically designed for noise reduction. No one took this wall into consideration during the review. Furthermore, no one came to physically check the walls and hear the noise level before a conclusion was reached.

All accusations were taken solely from the word of the owner of Kabul Restaurant. We feel that these accusations were made as a result of Kabul attempting to prosper and in the meantime, drive away another business which they feel is their strongest competitor. Moreover, we would like to stress the fact that from the day our business was open, we did not receive any complaints from private citizens nor public businesses nearby, except Kabul Restaurant. However, our business provides completely different services to customers as explained below. Kabul is a full service restaurant serving customer's lunch and dinner throughout the entire week. The following are their working hours:

Kabul Rest: Monday- Sunday
Lunch: 11:30 AM - 2:00 PM
Dinner: 5:30 AM - 10:00 PM

In contrast, we are not trying to compete with Kabul and they have no reason to be angry with this and make false accusations about our business. Aragvi is not a full service restaurant. Our working hours of operation are ONLY:

Aragvi Banquet Room: Friday – Sunday
7:00 PM – 12:00 AM

ATTACHMENT F

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Aragvi operates only by the request of customers and does not occur on a constant basis. This consists not every week and not even three days a week. Our business functions randomly, depending on whether a reservation is made. The banquet room is designed to benefit the public with the celebration of birthday parties, anniversaries, and family gatherings. Most of the time, the age of the guests is over 50 who do not enjoy loud music. Therefore, our music is played at a reasonable sound level.

Furthermore, we would like to point out that our business has the same exact rights and regulations to exist, as any other businesses would have.

We would like to point your attention to the fact that the application was filed for the purpose of upgrading a liquor license. We would like to hear the explanation on how the upgrading of the liquor license would affect the noise level. The same music equipment has been used and will continue to be used, along with the sound proof wall.

Staff members can physically check everything that we stated in this letter for accuracy. If needed, we are more than willing to cooperate with a representative from the Planning Development Department and ready to take any tests at your convenience.

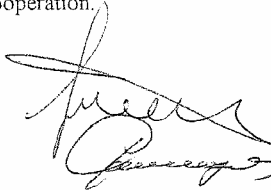
We would very much appreciate a response to this letter as soon as possible.

Please take everything stated in this letter into consideration before the final decision is made. Thank you for your time and cooperation.

With all respect,

Alex Birman (Owner- Partner)

Karapet Grigorian (Owner-Partner)

Two handwritten signatures are present. The top signature is in cursive and appears to be 'Alex Birman'. The bottom signature is also in cursive and appears to be 'Karapet Grigorian'.

Kabul Afghan Cuisine
833 W. El Camino Real
Sunnyvale CA 94087

To the City of Sunnyvale!

The problem that we have with the Winmart banquet room, next to our restaurant, consists of loud music with very high base which causes vibration in the bar area. Also our guests always complain of their loud music and high base. In addition, their guests usually gather next to our entrance door and smoke cigarettes which cause inconvenience to our guests. We would appreciate your cooperation in taking care of this matter.

Sincerely,

Najib Naimi

A handwritten signature in black ink, appearing to read 'Najib Naimi', with a long horizontal flourish extending to the right.

Attachment H

Staff response to the issues raised in the applicant's January 24, 2005 letter requesting a continuance and disagreeing with staff findings (Attachment F) are detailed in the following table.

Applicant's Concern	Staff Comments
<i>Para 1. Request to continue public hearing, concern that applicant's issues overlooked.</i>	Administrative Hearing continued to February 16, 2005, and meeting set with applicant to discuss concerns with staff report.
<i>Para 2. Only complaint was louder music. No nexus between upgrade of liquor license and louder music.</i>	The neighboring tenant had expressed concern with several types of disturbances, including volume of music and patrons (inside building and in parking area), and smoking outside near the restaurant door. Past experience with expansion of liquor licenses has been that increasing the strength of alcohol consumed results in an increase in noise or disturbance emanating from a site.
<i>Para 3. Independent soundproof walls from floor to ceiling with additional insulation were build between the subject site and neighboring tenant space for noise reduction. No one checked the walls and noise level.</i>	According to review of Building permit records (2004-2917 for general upgrades to the subject site), no additional sound proofing were added to shield the neighboring tenant space (currently occupied by Kabul restaurant) from an increase in noise. The neighboring tenant had filed a complaint with Neighborhood Preservation in February 2004 and has made subsequent complaints. The Municipal Code regulates noise across property lines only, limiting staff ability to monitor and regulate noise.
<i>Para 4. Noise complaints taken solely from neighboring tenant. No other complaints from businesses or people received.</i>	The City's policy is to respond to customer complaints about neighborhood preservation issues. No other businesses located within the immediate vicinity of the subject site operate after 7:00 p.m.

Applicant's Concern	Staff Comments
<i>Para 5 and 6. Clarification of hours of operation (7:00 p.m. to midnight) and frequency (by appointment only).</i>	The clarification is helpful. When staff spoke with the applicant on 1/11/05, staff understood the applicant to state that the restaurant/banquet use included lunch hours and that the evening operation hours were regular and not by appointment only.
<i>Para 7. Applicant has similar rights to other businesses.</i>	Staff agrees, the only concern is that a currently permitted activity that is having a negative impact on a neighboring tenant not be allowed to expand the use and potentially increase an existing negative impact.
<i>Para 8. Requests explanation for how upgrading liquor license would increase sound level.</i>	Past experience with expansion of liquor licenses has been that increasing the strength of alcohol consumed results in an increase in noise or disturbance emanating from a site.

Project Sentinel
Housing Mediation Program- Mortgage Counseling
1055 Sunnyvale-Saratoga Road, Suite # 3
Sunnyvale, CA 94087
Tel: (408) 720-9888

CASE ADDRESS: 833 W. EL CAMINO REAL, SUITE 1 CASE NO: 0201-45V

MEDIATION AGREEMENT

We, the undersigned, having participated in mediation on FEB 15, 2005, agree to the following:

- BOTH PARTIES AGREE THAT THE FEB 16, 2005 ADMINISTRATIVE HEARING ON APPLICANT'S LIQUOR LICENSE WILL BE CONTINUED UNTIL MARCH 2, OR IF CONTRACTOR IS UNABLE TO COMPLETE ANTICIPATED WORK, WITH 24 HOUR NOTICE, UNTIL MARCH 16, 2005.
- ALEX BERMAN HAS HIRED AN ACQUISITION ENGINEER WHO HAS RECOMMENDED INSTALLATION OF SOUND PROOFING MATERIALS. THE PRODUCT IS ON ORDER, AND INSTALLATION IS ANTICIPATED IN 1-2 WEEKS.
- NASIB NAIMI AGREES THAT ONCE INSTALLATION IS COMPLETE, HE HAS NO OBJECTION TO THE ISSUANCE OF A LIQUOR LICENSE.
- IF SOUND CONTINUES TO BE AN ISSUE, PARTIES WILL CONTINUE TO MEET TO ADDRESS THE ISSUE, AND MAY RESORT TO MEDIATION.
- UPON COMPLETION OF SOUND PROOFING INSTALLATION, NASIB NAIMI WILL DELIVER A LETTER TO THE CITY OF SUNNYVALE WITHDRAWING ANY OBJECTION TO THE ISSUANCE OF THE LIQUOR LICENSE, PRIOR TO THE HEARING.
- THIS AGREEMENT IS NOT CONFIDENTIAL, AND MAY BE SHARED WITH SUNNYVALE CITY OFFICIALS.

Signatures

ALEX BERMAN

NASIB NAIMI

Project Sentinel